

obligation for that period. Although "ability to pay" is not an element of the offense, a demonstration of the obligor's ability to pay contributes to a showing of willful failure to pay the known obligation. The presumption in favor of ability to pay is needed because proof that the obligor is earning or acquiring income or assets is difficult. Child support offenders are notorious for hiding assets and failing to document earnings. A presumption of ability to pay, based on the existence of a support obligation determined under state law, is useful in the jury's determination of whether the nonpayment was willful. An offender who lacks the ability to pay a support obligation due to legitimate, changed circumstances occurring after the issuance of a support order has state civil means available to reduce the support obligation and thereby avoid violation of the federal criminal statute in the first instance. In addition, the presumption of ability to pay set forth in the bill is rebuttable, a defendant can put forth evidence of his or her inability to pay.

The reference to mandatory restitution in proposed section 228(d) of title 18, United States Code, amends the current restitution requirement in section 228(c). The amendment conforms the restitution citation to the new mandatory restitution provision of federal law, 18 U.S.C. 3663A, enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996, P.L. 104-132, section 204. This change simply clarifies the applicability of that statute to the offense of failure to pay legal child support obligations.

Proposed subsection (e) clarifies that prosecutions for violations of this section may be brought either in the district where the child resided or the obligor resided during a period of nonpayment. Inclusion of this language is necessary in light of a recent case, *Murphy v. United States*, 934 F.Supp. 736 (W.D. Va. 1996), which held that a prosecution had been improperly brought in the Western District of Virginia, where the child resided, because the obligor was required, by court order, to send his child support payments to the state of Texas. Proposed subsection (e) is not meant to exclude other venue statutes, such as section 3237 of title 18, United States Code, which applies to offenses begun in one district and completed in another.

For all of the violations set forth in proposed subsection (a) of section 228, the government must show the existence of a determination regarding the support obligation, as under current law. Under proposed subsection (f)(3) the government must show, for example, that the support obligation is an amount determined under a court order or an order of an administrative process pursuant to the law of a State to be due from a person for the support and maintenance of a child or of a child and the parent with whom the child is living. Proposed subsection (f)(3), however, expands the scope of covered support obligations to include amounts determined under a court order or an order of an administrative process pursuant to the law of an Indian tribe. Subsection (f)(1) defines the term "Indian tribe" to mean an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe pursuant to section 102 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. The expanded definition permits enforcement of the statute for all children for whom child support was ordered by either a state or tribal court or through a state or tribal administrative process.

Proposed subsection (f)(2) of section 228 amends the definition of "state," currently in subsection (d)(2), to clarify that prosecutions may be brought under this statute in a commonwealth, such as Puerto Rico. The current definition of "state" in section 228,

which includes possessions and territories of the United States, does not expressly include commonwealths.

Mr. LOTT. Mr. President, I ask unanimous consent that the bill be read the third time and passed; that the motion to reconsider be laid upon the table; and that any statements relating to the bill appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1371) was read the third time and passed, as follows:

S. 1371

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Deadbeat Parents Punishment Act of 1997".

SEC. 2. ESTABLISHMENT OF FELONY VIOLATIONS.

Section 228 of title 18, United States Code, is amended to read as follows:

"§ 228. Failure to pay legal child support obligations

"(a) OFFENSE.—Any person who—

"(1) willfully fails to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than 1 year, or is greater than \$5,000;

"(2) travels in interstate or foreign commerce with the intent to evade a support obligation, if such obligation has remained unpaid for a period longer than 1 year, or is greater than \$5,000; or

"(3) willfully fails to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than 2 years, or is greater than \$10,000; shall be punished as provided in subsection (c).

"(b) PRESUMPTION.—The existence of a support obligation that was in effect for the time period charged in the indictment or information creates a rebuttable presumption that the obligor has the ability to pay the support obligation for that time period.

"(c) PUNISHMENT.—The punishment for an offense under this section is—

"(1) in the case of a first offense under subsection (a)(1), a fine under this title, imprisonment for not more than 6 months, or both; and

"(2) in the case of an offense under paragraph (2) or (3) of subsection (a), or a second or subsequent offense under subsection (a)(1), a fine under this title, imprisonment for not more than 2 years, or both.

"(d) MANDATORY RESTITUTION.—Upon a conviction under this section, the court shall order restitution under section 3663A in an amount equal to the total unpaid support obligation as it exists at the time of sentencing.

"(e) VENUE.—With respect to an offense under this section, an action may be inquired of and prosecuted in a district court of the United States for—

"(1) the district in which the child who is the subject of the support obligation involved resided during a period during which a person described in subsection (a) (referred to in this subsection as an 'obligor') failed to meet that support obligation;

"(2) the district in which the obligor resided during a period described in paragraph (1); or

"(3) any other district with jurisdiction otherwise provided for by law.

"(f) DEFINITIONS.—As used in this section—

"(1) the term 'Indian tribe' has the meaning given that term in section 102 of the Fed-

erally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a);

"(2) the term 'State' includes any State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

"(3) the term 'support obligation' means any amount determined under a court order or an order of an administrative process pursuant to the law of a State or of an Indian tribe to be due from a person for the support and maintenance of a child or of a child and the parent with whom the child is living."

UNANIMOUS-CONSENT AGREEMENT—EXECUTIVE NOMINATIONS TO REMAIN IN STATUS QUO, WITH EXCEPTIONS

Mr. LOTT. Mr. President, I ask unanimous consent, as in executive session, that all nominations received in the Senate during the 105th Congress, 1st session, remain in status quo, notwithstanding the sine die adjournment of the Senate, with the following exceptions: Bill Lann Lee and Executive Calendar No. 370.

I further ask unanimous consent that all provisions of rule XXXI, paragraph 6, of the Standing Rules of the Senate remain in effect, notwithstanding the previous agreement.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT—H.J. RES. 106

Mr. LOTT. Mr. President, I ask unanimous consent that when the Senate receives House Joint Resolution 106, the continuing resolution, that it be considered read three times and passed, and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADOPTION AND SAFE FAMILIES ACT OF 1997

Mr. LOTT. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (H.R. 867) to promote the adoption of children in foster care.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives.

[The bill was not available for printing. It will appear in a future issue of the RECORD.]

Mr. DEWINE. Mr. President, H.R. 867, the Adoption and Safe Families Act of 1997, is an extremely important piece of legislation. Let me begin by thanking Senators CRAIG, CHAFEE, ROCKEFELLER, JEFFORDS, COATS, GRASSLEY, MOYNIHAN, LANDRIEU, Chairman ROTH, and Senator LOTT, the majority leader, who has made this bill a priority. I thank all of them and I thank their staffs for all the hard work they have done. I also want to thank our distinguished House colleagues Representatives DAVE CAMP and BARBARA KENNELLY, as well as Chairman SHAW, and their staffs, for their hard work in moving the bill through the House of Representatives.